

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO : NO. 2007-0268
Plaintiff-Appellee : On Appeal from the Hamilton County
Court of Appeals, First Appellate
vs. : District
DANIELLE SMITH : Court of Appeals
Case Number C-060077
Defendant-Appellant :

MEMORANDUM IN RESPONSE TO MOTION FOR RECONSIDERATION

Joseph T. Deters (0012084P)
Prosecuting Attorney

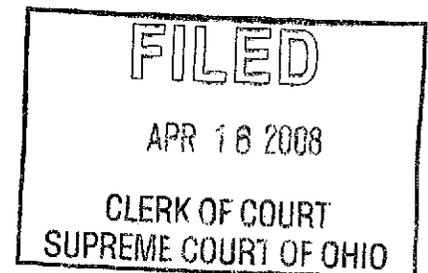
Judith Anton Lapp (0008687P)
Assistant Prosecuting Attorney
Counsel of Record

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3009
Fax No. (513) 946-3021

COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

Michaela M. Stagnaro
Attorney at Law
906 Main St., Suite 403
(513) 241-0500

COUNSEL FOR DEFENDANT-APPELLANT, DANIELLE SMITH



IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2007-0268
Plaintiff-Appellee	:	
vs.	:	
DANIELLE SMITH	:	<u>MEMORANDUM IN RESPONSE TO</u>
Defendant-Appellant	:	<u>MOTION FOR</u>
		<u>RECONSIDERATION</u>

The State of Ohio, plaintiff-appellee, opposes the Motion for Reconsideration filed by defendant-appellant on April 7, 2008, because the complained-of language states established precedent that is not in need of review.

Smith, joined in an amicus curiae brief filed by the Office of the Ohio Public Defender and the Cuyahoga County Public Defender, asks for reconsideration of the following language from ¶31 of the decision published on March 26, 2008:

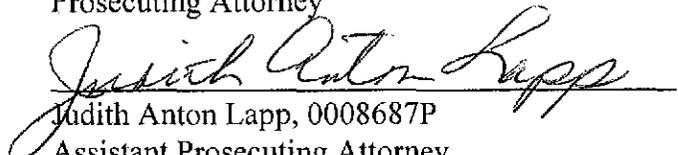
“Smith also argues that theft requires proof of the value of the property stolen, while robbery has no such element. But the elements of theft do not include value. Rather, value is a special finding to determine the degree of offense, but is not part of the definition of the crime. Thus, Smith’s position is not well taken.”

Smith argues that value is “most certainly an essential element” of theft. She also suggests that the *Smith* decision raises the issue of whether this Court has usurped the legislative branch and rewritten the Ohio Revised Code. The language in ¶31 simply restates what has long been the law in Ohio and does not rewrite the Revised Code in any fashion.

Many of the crimes described in Chapter 2913, titled "Theft and Fraud," define the crime alleged in factual terms in an initial paragraph and set forth what delineates the degree of the offense in a subsequent paragraph. For example, a finding of value is necessary to determine the degree of offense in R.C. 2913.11, Passing Bad Checks; R.C. 2913.21, Misuse of Credit Cards; R.C. 2913.31, Forgery, and R.C. 2913.51, Receiving Stolen Property. In numerous other criminal statutes, the conduct which constitutes a crime is written in an initial paragraph and does not include the factors that delineate the degree of the offense.¹ This construction of Ohio statutes is not new or novel; it has not generated confusion among the lower courts, has not conflicted with the constitutional right to indict, and did not recast the elements of the crimes. The language used by this Court in the *Smith* decision was clear and uncomplicated; it stated what has always been apparent in the construction of the statute and nothing more. For these reasons, the state submits that a reconsideration is not warranted and asks that the motion for such be denied.

Respectfully,

Joseph T. Deters, 0012084P
Prosecuting Attorney



Judith Anton Lapp, 0008687P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3009

Attorneys for Plaintiff-Appellee

¹ See R.C. 2907.02, Rape; R.C. 2907.03, Sexual Battery, R.C. 2907.04; Unlawful Sexual Conduct with a Minor.

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Michaela M. Stagnaro, 906 Main St., Suite 403, Cincinnati, Ohio 45202, counsel of record, this 13th day of April, 2008.


Judith Anton Lapp, 0008687P
Assistant Prosecuting Attorney

cc:

Kelly K. Curtis (79285)
Assistant State Public Defender
Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 4321(614) 466-5394

**COUNSEL FOR AMICUS CURIAE,
OHIO PUBLIC DEFENDER**

Cullen Sweeney (77187)
Assistant Public Defender
Cuyahoga County Public Defender
310 Lakeside, Second Floor
Cleveland, Ohio 44113

**COUNSEL FOR AMICUS CURIAE,
CUYAHOGA COUNTY, OHIO
PUBLIC DEFENDER**